Supreme Court, U.S.
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In the Supreme Court of the United States.

Filed May 26, 1902.

No. 138.

JANE JOHNSON, PLAINTIFF IN ERROR,

vs.

NEW YORK LIFE INSURANCE COMPANY,
DEFENDANT IN ERROR.

Motion, and Brief in Support of Motion, to Dismiss, Writ of Error.

GEORGE W. HOBBELL AND
JAMES H. McBROOM,
Attorneys for Defendant in Error.

In the Supreme Court of the United States.

18,133.

JANE JOHNSON,
Plaintiff in Error,
vs.
NEW YORK LIFE INSURANCE COMPANY,
Defendant in Error.

Motion to Dismiss Writ of Error.

Comes now the New York Life Insurance Company, defendant in error, by its attorneys, and moves the court to dismiss the writ of error in the above entitled cause for want of jurisdiction, and for ground of said motion says:

First. That the judgment from which said writ of error was taken was a judgment of the Supreme Court of the State of Iowa, which was the highest court of said state in which a decision in said suit could be had (Record, page 195).

Second. That the ground upon which said writ of error was allowed and the jurisdiction of this Honorable Court invoked was, that said plaintiff in error claimed in said cause a right or privilege under the Constitution of the United States, and the decision was against the right or privilege specially set up or claimed by her under such Constitution (page 106).

Third. That the particular right or privilege the

plaintiff in error claimed was denied her by said judgment was, that said Supreme Court of the State of Iowa failed to give full faith and credit to the statutory provisions and laws of the State of New York, by which it is provided that no life insurance company chartered under the laws of the State of New York shall have power to declare forfeited or lapsed any policy without first mailing to the insured a notice at least thirty and not more than sixty days prior to the day when the premium was payable, stating therein the amount of the premium, the due date of it, the time and place of payment, and that the policy will become forfeited and void if the premium is not paid within thirty days after the mailing of the notice (pp. 106, 108, 6).

Fourth. But in truth and in fact said Supreme Court of Iowa did not by its said judgment fail or refuse to give full faith and credit to any of the statutes or laws of the State of New York. On the contrary, said Supreme Court of the State of Iowa by its said judgment fully and carefully considered said statutory provisions, and all the statutes and laws of the State of New York brought to its attention in said record, and their operation and effect, in connection with the terms of the life insurance contract in question; and after giving full faith, credit, and effect to each and all of said statutes and laws of the State of New York, said court concluded that said New York statutes and laws had no application to said life insurance contract, "Because the policy sued upon was, at the request of the insured, converted into a paid-up policy for a fixed term, which term expired before the assured died" (p. 101). The Iowa court's decision was wholly based upon the construction it gave to the insurance contract in

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question and upon its judgment of the operation and effect of said statutes and laws of the State of New York, and was not due to a failure to give full faith and credit to said statutes and laws of said New York State.

Wherefore, forasmuch as by reason of the premises said final judgment is not one of those which may be re-examined and reversed or affirmed by this Honorable Court, said defendant in error prays that said writ of error may be dismissed for want of jurisdiction.

JAMES H. MCINTOSH,
Att'y for Defendant in Error.

GEORGE W. HUBBELL,
Of Counsel.

BRIEF IN SUPPORT OF THE FOREGOING MOTION TO DISMISS.

I

The Issues in the State Court.

The plaintiff's action is based on a life insurance policy dated December 27th, 1890, by the terms of which the defendant company, in consideration of the annual payment of $1,060 November 11th, each year, insured the life of Frank C. Johnson for $25,000 (p. 1).

Johnson paid the premiums down to and including November 11th, 1892. He did not pay the November 11th, 1893, premium, or any subsequent premium (p. 8). He died September 28th, 1896 (p. 7).

Pursuant to Johnson's application, the Company, January 20th, 1893, extended to said policy the benefits of the accumulation policy plan of said defendant, and delivered to him a certificate to that effect (p. 9). By said policy, as modified by said accumulation certificate, it was provided that "If the premiums are paid to November 11th, 1893, the insurance of $25,000 will be extended to May 11th, 1896" (p. 18).

Said contract, as modified by said accumulation certificate, contained the following benefits (p. 18):

"NON-FORFEITURE.—After this policy shall have been in force three full years, in case of non-payment of any premium subsequently due, and upon the payment within thirty days thereafter of any indebtedness to the company on ac-

count of this policy, (1), the insurance will be extended for the face amount, as provided in the table below:

"If the premiums are paid—				The insurance of $25.000 will be extended—			
To	November	11th,	1893	To	May	11th,	1896
"	"	"	1894	"	January	"	1899
"	"	"	1895	"	August	"	1901
"	"	"	1896	"	"	"	1903
"	"	"	1897	"	"	"	1905
"	"	"	1898	"	May	"	1907
"	"	"	1899	"	February	"	1909
"	"	"	1900	"	August	"	1910
"	"	"	1901	"	January	"	1912
"	"	"	1902	"	May	"	1913
"	"	"	1903	"	June	"	1914
"	"	"	1904	"	July	"	1915
"	"	"	1905	"	"	"	1916
"	"	"	1906	"	June	"	1917
"	"	"	1907	"	March	"	1918
"	"	"	1908	"	November	"	1918
"	"	"	1909	"	July	"	1919"

The Petition.

The plaintiff brought her suit on said policy as originally written, omitting all mention of the benefits of said accumulation policy plan the insured had applied for and received.

After setting forth the terms of the original policy in the usual form of a petition on an insurance contract, she alleged that Johnson died September 28th, 1896, and that by the New York laws under which said policy was written it was provided that, "No life insurance company, doing business in the State of New York, shall have power to declare forfeited or lapsed any policy hereafter issued or renewed by reason of non-payment of any annual premium or interest, or any portion thereof, except as hereinafter provided. Whenever any premium or in-

terest due upon any such policy shall remain unpaid, when due, a written or printed notice, stating the amount of such premium, or interest due on such policy, the place where said premium or interest should be paid, and the person to whom the same is payable, shall be duly addressed and mailed to the person whose life is assured, or the assignee of the policy, if notice of the assignment has been given to the company, at his or her last known post-office address, postage paid by the company, or by an agent of such company, or person appointed by it to collect such premium. Such notice shall further state that unless the said premium or interest then due shall be paid to the company, or to a duly appointed agent or other person authorized to collect such premium, within thirty days after the mailing of such notice, the said policy and all payments thereon will become forfeited and void. In case the payment demanded by such notice shall be made within the thirty days limited therefor, the same shall be taken to be in full compliance with the requirements of the policy in respect to the payment of said premium or interest, anything therein contained to the contrary notwithstanding; but no such policy shall in any case be forfeited or declared forfeited or lapsed until the expiration of thirty days after the mailing of such notice.

"Provided, however, that a notice stating when the premium will fall due, and that if not paid the policy and all payments thereon will become forfeited and void, served in the manner hereinbefore provided, at least thirty and not more than sixty days prior to the day when the premium is payable, shall have the same effect as the service of the notice hereinbefore provided for."

The petition also states that the notice referred to in the above New York statute was never sent. There-

fore, the plaintiff claimed the policy continued in force, notwithstanding the premiums had only been paid to November 11th, 1893, and notwithstanding the terms of the policy as modified by the accumulation certificate.

The Answer.

In its answer, the defendant, for its first defence, raised an issue of the jurisdiction of the court (p. 7).

For its second defence, the defendant denied all the allegations of the petition, except that it was a New York corporation (p. 8).

For its third defence, the defendant admitted the making of the policy in question, and set forth the fact of the insured's application for the benefits of the defendant's accumulation policy plan, and the nature of said benefits, the payment of premiums to November 11th, 1893, and no later, thereby extending the insurance to May 11th, 1896; and averred "that on said last named date said policy expired by limitation" (p. 8).

For its fourth defence, the defendant admitted the making of the policy in question, and averred that the notice law of 1877 set forth in the plaintiff's petition was supplanted by a subsequent notice law passed in 1892, and that pursuant to said 1892 law the defendant duly sent the notice in respect to the November 11th, 1893, premium; that said premium was not paid, and that thereupon the benefits of the accumulation policy thereby became operative, extending said insurance to May 11th, 1896, and "that on said last named date said policy expired by limitation" (p. 9).

The Reply.

The reply averred that the benefits of said accu-

mulation policy plan were merely those extended by a New York statute therein described, and denied all the allegations of the answer.

II

Verdict and judgment for the defendant, because the New York notice law did not apply to the policy.

At the conclusion of the trial on its merits, the defendant moved the court to instruct the jury to return a verdict for the defendant, because "The testimony in writing conclusively shows that whatever policy Frank C. Johnson ever had with the defendant, certainly had expired by limitation on the 11th of May, 1896" (p. 73).

The court sustained this motion, because the policy, as modified by the accumulation certificate, "Thereby becomes non-forfeitable (p. 76). * * * This accumulation policy provided that the insurance should terminate in case payments were discontinued, May 11th, 1896. Payments were discontinued. The decedent died in September, 1896, and under the conditions of the accumulation policy his insurable interest had expired" (p. 78).

III

The Iowa Supreme Court affirmed the judgment, because the New York notice law did not apply to this policy.

In their opinion, after referring to the New York notice law and the decisions of New York and other states construing it, the Supreme Court of Iowa say, 'We do not understand that the general principles:

announced in these cases are disputed by the appellee. Its contention is that they have no application to the contract here involved, because the policy sued upon was at the request of the assured converted into a paid-up policy for a fixed term, which term expired before the assured died. Several further defences are urged, but the conclusion we reach on the one just stated renders it unnecessary that we consider the others" (p. 101).

After the above statement of the point to be decided, and a full consideration of all the New York statutes and decisions relied upon by the appellant, the court in their opinion then took up the specific terms of this policy. After stating the terms of the policy, as modified by the accumulation certificate, the court said: "What was the effect of this new contract? If it converted Johnson's policy into a contract for paid up insurance, then no notice was necessary. The notice is for the benefit of the assured. It would avail him nothing when no act of his would enable him to continue the policy in force. The language of the statute is plain enough on this point. Notice is required only as a basis for requiring a forfeiture or lapse of a policy for non-payment of premium or interest. Where the term expires for which the risk is taken, there is neither a forfeiture nor a lapse" (p. 103).

Having fully discussed the terms of the accumulation certificate, the court concluded by saying: "By the terms of the agreement which he made, his life contract, upon his default in the payment of the premium due November 11th, 1893, became transmuted into a paid-up policy, ending May 11th, 1896 (p. 104). * * The notice is required only when it is sought

to declare a contract forfeited or lapsed. Neither was done here. (p. 104).

"Our conclusion is, that this was a policy for a term that expired before Johnson's death, and therefore plaintiff has no right of recovery. The other questions discussed are rendered immaterial by this finding. Affirmed"—(p. 105).

IV

The Iowa Supreme Court's construction of this contract and of the New York notice law, does not deny to the New York laws the full faith and credit which the constitution and laws of the United States demand in order to give this court jurisdiction on writ of error.

1. The issues in the case required the Iowa court to construe this policy, and to determine the operation and effect of the New York notice law in respect to it. The court did this, and according to its best judgment the New York notice law was not applicable to the policy.

2. Nor did the Iowa court's conclusion deny full faith, credit, and effect, to any of the decisions of the New York courts.

There is not now, nor ever has been, a decision by the courts of New York holding, or in any way indicating, that this notice law is applicable to a policy like the one in question, which agrees that if the premiums are paid to a certain date the insurance for the full amount named in the policy will be extended to a certain other date from three to ten years—depending upon the particular date to which the premiums are paid—beyond the date of payment.

In *Baxter v. Brooklyn Life Ins. Co., 119 N. Y., 450* (Record, p. 28), which the plaintiff pleaded, proved, and relied upon, the policy was an ordinary forfeitable policy. It was not a non-forfeitable policy of term insurance. The court held, that the notice law was applicable to it; that the burden of proving the sending of the notice was on the insurance company; and that as the defendant had failed to offer any proof of notice, it was not error to deny its motion "For a non-suit on the ground that the insured had failed to comply with the terms and conditions of the policy by neglecting to pay the quarterly premium".

In *Rowe v. Brooklyn Life Ins. Co., 16 Misc. R. 323* (Record p. 32), it was agreed that "The policy shall cease and be null and void if the premium or premium notes are not paid when due. The company sent the notice, but the "Notice did not state the correct amount due on the policy, but stated a considerably larger amount than was due". And so the court held that "The notice was not, therefore, the statutory notice", and was not sufficient to forfeit the policy for non-payment of premium.

Sands v. New York Life Insurance Company, 50 N. Y., 626 (Record, p. 61), was decided in 1872, before the New York notice law was passed. The premium due January 20th, 1862, was paid in confederate money, which was received by the general agent of the company as payment. The insured died in July, 1862. The court held, that the payment in confederate money under the circumstances did not forfeit the policy. Nor did the civil war nullify it.

Cohn v. New York Mutual Life Insurance Company, 52 N. Y., 610 (Record, p. 62), was decided on the prin-

ciple announced in *Sands v. New York Life Insurance Company*; that is, that the civil war did not avoid this sort of contract.

Wyman v. Phoenix Ins. Co., 45 Hun., 145 (Record, p. 63), is the only other case the plaintiff put in evidence. It was "Agreed in the policy that it should be null and void" in case any premium or premium note should not be paid when due. The premium that matured October 25th, 1884, "Was not at that time paid, and because of that failure to pay the policy by its own terms was declared forfeited." The court held, that because of a reinstatement of the policy in April, 1884, it was then "renewed," and thereafter became subject to the notice law, and was "incapable of forfeiture without the service of notice."

The foregoing are all the cases the plaintiff put in evidence.

The defendant put in evidence the case of *Carter v. Brooklyn Life Ins. Co., 110 N. Y., 15*. The purpose of putting this decision in evidence was to show that if any notice law at all applied to the policy in question, it was the 1892 notice law pleaded in the defendant's answer (p. 12); for the Carter case held that "The payment and receipt by the company of each annual premium constituted a renewal of the policy within the meaning of the word 'renewed' as used in the act."

The foregoing are all the decisions that were put in evidence on this trial. Certainly it cannot be claimed that any one of them construes or relates to a policy that on its face purports to be non-forfeitable, and that contains a table of dates to which the insurance for the full amount named in the policy will be extended if the premiums are paid to certain other dates. No one of

them relates to a non-forfeitable policy of term insurance, or indicates that the New York notice law is applicable to such a policy.

Therefore, there being no construction of a policy like this by the New York courts, and no construction of the New York notice law applicable to a policy like this, it devolved upon the Supreme Court of Iowa in this case to construe both the policy and the New York notice law with respect to the policy; and having done so, its judgment is final, and cannot now be re-examined on the ground that the Iowa court failed to do the very thing this whole record shows it most faithfully did do.

The record shows on its face that the Iowa court full and carefully considered and construed the New York notice law and all the New York decisions brought to its attention, and that after giving to each and all of them full faith, credit, and effect, the court concluded that the "Notice is required only as a basis for declaring a forfeiture or lapse of a policy for non-payment of premium or interest" (p. 103); hence, that the notice law had no application to this policy, because it was a non-forfeitable policy of term insurance, which had expired by limitation before the insured died.

3. Whether the Iowa court was right or wrong in its construction of this contract and in its application of the New York laws, is not material here. If it gave full faith and credit to the New York laws, then this motion should be sustained, whether its judgment of the meaning of this contract and of the operation and effect of the New York laws was erroneous or not.

If this court were to retain jurisdiction of this case,

it is clear that the question to be determined would be not whether or not the Iowa court had given full faith and credit to the laws of New York state, but whether or not the Iowa court had correctly construed this insurance contract and had correctly construed and applied the laws of New York. This court does not acquire jurisdiction on writ of error to the highest court of a state, for the purpose of passing upon the question as to whether or not the state court correctly construed the laws of another state.

Cook County v. C. & C. C. D. Co., 138 U. S., 635.

Glenn v. Garth, 147 U. S., 360.

Lloyd v. Matthews, 155 U. S., 222.

Banholzer v. New York Life Ins. Co., 178 U. S., 402.

Yazoo & Miss. R. R. Co. v. Adams, 180 U. S., 41.

The above decisions, and numerous others of similar import, clearly and conclusively establish the proposition, that where a state court gives a certain construction to a contract governed by the laws of another state, or merely construes but does not deny the validity of the statute of another state, this court cannot take jurisdiction to re-examine, reverse, or affirm the judgment of the highest court of the state on the ground that full faith and credit were denied to the laws of another state, even although this court may be of the opinion that the state court erroneously construed the contract or laws of the other state.

In *Glenn v. Garth, 147 U. S., 360*, the Court of Appeals of New York considered the proper construction and operation of a statute of the State of Virginia,

relating to the evidenciary force to be given to the fact that a party's name appeared as a stockholder on a corporation's books, and held that it was merely *prima facie* evidence of ownership. The plaintiff claimed that a statute of Virginia made it conclusive evidence, and brought the case to this court on writ of error, upon the ground that full faith and credit had not been given to the Virginia statute. In dismissing the case for want of jurisdiction, this court said:

"If we were to assume jurisdiction of this case, it is evident that the question submitted would be, not whether the decision of the New York court was against a right specially set up and claimed under the Constitution of the United States, or necessarily arising, but whether in that decision error intervened in the construction of the statutes of Virginia. If every time the courts of a State put a construction upon the statutes of another State, this court may be required to determine whether that construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect it would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisicdtion would be enlarged in a manner never heretofore believed to have been contemplated."

In *Lloyd v. Matthews, 155 U. S., 222*, the Court of Appeals of Kentucky so construed a statute of Ohio prohibiting an insolvent debtor from preferring a creditor as to limit its application to preferences made in deeds of assignment to trustees for the benefit of creditors generally, and therefore not to apply to the case before the court. The case was brought to this court on writ of error, on the ground that full faith and credit was denied to the laws of Ohio. This court, however, dismissed the writ of error for want of jurisdiction, because it is the settled law that "Where the validity of

a state law is not drawn in question, but merely its construction, no federal question arises."

The late case of *Banholzer v. New York Life Ins. Co., 178 U. S., 402*, supports this motion in every way. In that case it was claimed that the supreme court of Minnesota failed to give full faith and credit to a New York statute. The Minnesota court there, as in this case, fully considered the New York statue in question and all the New York decisions construing it, and after a full consideration of all of them concluded that the notice required by the New York statute "Was not applicable to the notes given by Banholzer for part of the September premium." The case was brought into this court on the ground that the Minnesota court did not give full faith and credit to the statutes and laws of New York. In sustaining a motion to dismiss the writ of error for want of jurisdiction, this court held that the ruling of the Minnesota court "Was a construction of the statute, not a denial of its validity;" and for this reason dismissed the writ of error.

In view of the face of this record, therefore, and the constitution and laws under which the jurisdiction of this court is invoked, and the decisions of this court construing them, it is very clear that this is not a judgment which may be re-examined, reversed, or affirmed by this Honorable Court,and therefore, we submit, the motion to dismiss for want of jurisdiction should be sustained.

Respectfully Submitted,

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Attorney for Defendant in Error.

GEO. W. HUBBELL,
Of Counsel.

Omaha, 2 May, 1902.